IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6768 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

INDUBEN JAYANTILAL UMRIGAR

Versus

LALUBHAI MAVJIBHAI UMRIGAR

Appearance:

1. Special Civil Application No. 6768 of 2004

MR AJ PATEL for Petitioner No. 1

MR RM CHHAYA for Respondent No. 1

MR PJ VYAS for Respondent No. 2

GOVERNMENT PLEADER for Respondent No. 3-5

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 02/08/2004

ORAL JUDGEMENT

Rule. Mr. Nagesh Sood, learned AGP waives service of Rule on behalf of respondetns No. 3 to 5.

2. In this Special Civil Application under Article 226 of the Constitution of India, the petitioner has

challenged the judgment and order passed by the Secretary (Appeals) dated 10th May 2004 in Revision Application No. 100 of 2001 in dismissing the same and confirming the order passed by the Collector, Surat, dated 11.1.2001 in RTS Appeal No. 37 of 2001 in respect to Entry No. 2247 with regard to land in question.

3. One Jadavbhai Jogibhai was the owner of land bearing Survey No. 62 (Old) and new Survey No. 48 situate at Village Mesu, TAluka Choryasi, District Surat. The said Jadavbhai Chugibhai had 2 daughters, one Hansiben, wife of Ramabhai Lalu and (2) Paniben, wife of Bhikhubhai Keshavbhai. On death of Jadavbhai Jogibhai the names of aforesaid two daughters came to be entered into the record of rights vide entry No. 516 dated 15.9.1965. THereafter Paniben died. She had no issues and accordingly on the death of Paniben the name of her husband, Bhikhubhai Keshavbhai came to be entered into the record of rights vide entry No. 1581 dated 1.5.1993. It seems that though Hansiben, daughter of Jadavbhai had 1/2 share in the land in question, Bhikhubhai Keshavbhai executed Will dated 28.1.1995 by which the entire land came to the ownership of the petitioner herein. On the death of Bhikhubhai for 1/2 portion of the land the name of the petitioner herein came to be entered into in the record of rights vide Entry No. 2247 dated 28th June 1998. The said entry No. 2247 date 28th June 1998 came to be challenged by the respondent No.1 herein Lalubhai Mavjibhai before the Deputy Collector, Choryasi Pranth, Surat being RTS Appeal No. 28/99. The Deputy Collector, Choryasi vide his judgment and order dated 6.1.2001 after giving an opportunity to all the concerned parties set aside Entry No. 2247 dated 28th June 1998 and passed an order to enter the names of heirs of deceased Bai Hansiben, daughter of Jadavbhai Jogi as Bhikhubhai Keshubhai has died without leaving any heir as he was issueless. Being aggrieved and dissatisfied with the judgment and order passed by the Deputy Collector, Choryasi dated 6.1.2001 passed in RTS Appeal No. 28/99, the petitioner preferred an appeal before the Collector, Surat being RTS Appeal No. 37 of 2001. The Collector, SUrat also by his judgment and order dated 11.9.2001 dismissed the said appeal confirming the order passed by the Deputy Collector, Choryasi dated 6.1.2001 passed in Appeal No. 28/99 in quashing and setting aside the entry No. 2247 dated 28th June 1998.

4. Being aggrieved and dissatisfied with the judgment and order passed by the Collector, Surat dated 11.9.2001 in RTS Appeal No. 37 of 2001, the petitioner preferred a revision application before the State

Government, i.e. Secretary (Appeals), Revenue Department, State of GUjarat which was numbered as Revision Application No. 100/2001. The Secretary (Appeals), Revenue Department, State of Gujarat, AHmedabad, by his judgment and order dated 10th May 2004 dismissed the revision application confirming the order passed by both the authorities below in setting aside the entry No. 2247 dated 28th June 1998. This has given rise to the present Special Civil Application under Article 226/227 of the Constitution of India.

5. Shri AJ Patel, learned advocate appears on behalf of the petitioner. Shri PJ Vyas, learned advocate appears on behalf of respondent No.1. SHri RM Chhaya, learned advocate appears on behalf of heirs of Hansiben RAmabhai and Shri Sood, learned AGP appears on behalf of the State Government.

6. Shri AJ Patel,ld. advocate has assailed the judgment and order passed by all the authorities below in cancelling Entry No. 2247 which was in favour of the petitioner by way of Will on the following grounds;

(1) The RTS authorities have no jurisdiction to go into the question of title and all the authorities below have committed an error in deciding the question of title to the land.

(2) All the authorities below have committed an error in usurping jurisdiction of Civil Court while deciding the question of validity or otherwise of the Will in question.

(3) The authorities have committed an error in ignoring the law laid down by the Hon'ble Supreme Court of India in the judgment reported in 10 GLR 992 to the effect that RTS authorities are under obligation to stay their hands and relegate the parties to the Civil Court.

Shri Patel has relied upon the judgment of this Court in the case of Evergreen Apartments Cooperative Housing Society Vs. Special Secretary, reported in 1991(1) GLR 113. He has also relied upon the Judgment of this Court in the case of Siddharth B. Shah & Others Vs. State of Gujarat - 1999 (3) GLR Page 2527. He has also relied upon the order passed by this Court dated 17.4.2004 in Letters Patent Appeal No. 718 of 1999 in Special Civil Application No. 1533 of 1999. He has further submitted that in fact a civil suit is already pending between the parties now initiated by respondent No.1 herein, being

Regular Civil Suit No. 81 of 2003 pending in the Court of Civil Judge (SD), Surat. Therefore, Mr. Patel requested to allow the present Special Civil Application by quashing and setting aside the judgment and order passed by all the authorities below and restore the Entry No. 2247 of 28th June 1998. On the other hand, Shri PJ Vyas and Shri RM Chhaya, learned advocates who appeared on behalf of the respondents have strongly opposed the present Special Civil Application. They have submitted that having found that Bhikhubhai had no authority to give the land in question by way of Will and that he was not the actual owner of the land in question the Entry in favour of the petitioner is rightly set aside by all the authorities below. He has also further submitted that mere entries in the revenue records do not confer any right, title or interest in the land in question. They have further submitted that the revenue entries are for presumptive value and/or for fiscal purpose for the purposes of recovery of revenue and therefore requested to dismiss the Special Civil Application.

7. Heard the learned advocates appearing on behalf of the parties. The Entry in favour of the petitioner was pursuant to the Will executed by Bhikhubhai Keshubhai and the said Entry was mutated on 28th June 1998. The said Entry came to be challenged by respondent No.1 and having gone into the question of legality and validity of the Will and the authority of deceased Bhikhubhai who executed the Will and transferred the land in question by way of Will and considering the fact that whether the petitioner was in fact an agriculturist or not and by way of Will he has tried to become an agriculturist, the Deputy Collector set aside the Entry No. 2247 dated 28th June 1998 and directed to mutate the names of heirs of deceased Bai Hansi, daughter of Jadav Jogi. The said order came to be confirmed by the Collector relying upon the judgment of this Court, reported in 1996 (1) GLH 816 to the effect that the names of all the heirs are required to be entered into the revenue records till the legality and validity of the Will is proved before the Civil Court. The said order also came to be confirmed by the revisional authority. As held by this Court in the case of Evergreen Apartment Cooperative Housing Society (Supra), so far as the proceedings under Rule 108 of the Bombay Land Revenue Rules are concerned which are popularly known as 'RTS proceedings', the entries made in the revenue records have primarily a fiscal value and they do not confer title. Such mutations have either to follow the documents of title or the orders passed by the competent authority under special enactments. This Court has also in its order dated 17th April 2000 passed in

Letters Patent Appeal No. 718 of 1999 in Special Civil Application No. 1533 of 1999, after considering the observations of the Hon'ble Supreme Court in the case of State of Gujarat vs. Raghunatha, reported in 10 GLR Page 992, has confirmed the order passed by the learned Single Judge. The Division Bench of this Court has considered the following paragraph of the Hon'ble Supreme Court in the case of State of Gujarat vs. Raghunatha (Supra), which reads as under;

> "We are also of the opinion that the Commissioner should not have gone into the question of title. It seems to us that when the title of an occupant is disputed by any party before the Collector or the Commissioner and the dispute is serious the appropriate course for the Collector or the Commissioner would be to refer the parties to a competent court and not to decide the question of title himself..."

Even this Court in another case reported in Ratilal Chunilal Solanki and Others Vs. Shantilal Chunilal Solanki - 1996 (2) GLR Page 525, dealing with the question in regard to transfer by Will, as held as under;

> "The revenue authorities are not competent to resolve any disputed question of title of any property mentioned in any revenue record. The parties ought to have been directed to approach the competent Civil Court for resolution of their such dispute. It is unfortunate that, instead of adopting this course, respondents No. 8 and 9 have more or less decided the question of title flowing from the alleged testamentary of document purported to have been executed by the petitioner on 12th September 1980. This position becomes clear from the evidence recorded in the revenue proceedings including examination of the adducing witness of the alleged testamentary document. If respondents No. 1 to 6 or any of them wanted to propound the Will and claim legacy in their name with regard to the disputed lands and if mutation in their names was objected to by anyone, more particularly by the petitioners by their notice at Annexure A to this petition, the revenue authorities ought to have directed propounders of the Will to get the genuineness and validity of

> the Will to be decided by the competent Civil Court. The contrary approach of the revenue authorities as reflected in the impugned orders, cannot, therefore be sustained in law."

In the aforesaid case of Ratilal Chunilal Solanki, the question was with regard to the legality and validity of the Entry which was made on the strength of a testamentary document stated to have been executed by the deceased and while cancelling the Entry on the strength of a testamentary document, this Court directed the authority to mutate the names of the petitioners (who were opposing the Will) and the respondents No. 1 to 6 of that Special Civil Application (who were the beneficiaries on the strength of the testamentary document, i.e. Will) in the revenue records pertaining to the disputed lands for fiscal purposes for which the revenue records are maintained. Considering the aforesaid judgments and orders passed by this Court and considering the judgment and order passed by the Hon'ble Supreme Court of India, the procedure adopted by all the authorities below, i.e. revenue authorities while dealing with RTS proceedings requires to be quashed and set aside. The revenue authorities could not have decided the question of title and legality and validity of the Will in RTS proceedings. As held by the Hon'ble Supreme Court of India as well as this Court in catena of judgments, the entries in the revenue records have fiscal value in respect to the title to the properties reflected in the revenue records. They do not confer any right, title or interest in the land in question only on the basis of the entry. They are for fiscal purposes for the purpose of recovery of revenue. If any dispute as to the title of the property mentioned in the revenue record arises the parties are required to go the competent civil court for resolving their dispute. The revenue authorities are not competent to decide the disputed question of title to any property mentioned in any revenue record. Thus, the orders passed by all the authorities below in deciding the question of legality and validity of the Will require to be quashed and set aside. It was not open for the Deputy Collector to go into the legality and validity of the Will and go into the question whether Bhikhubhai was having authority to transfer the land by way of Will and/or whether he was absolute owner of the land in question or not. The Deputy Collector ought to have relegated the parties to approach the Civil Court for resolution of their such dispute. Now, it is submitted in view of the fact that a civil suit is already pending between the parties being

Civil Suit No. 81 of 2003 the legality and validity of the Will is required to be considered by the Civil Court. Under the circumstances, the judgment and order passed by the Deputy Collector dated 6.1.2001, the order of the Collector dated 11.9.2001, and of the revisional authority, i.e. Secretary (Appeals) dated 10th May 2004 are required to be quashed and set aside and are hereby quashed and set aside.

8. It is made clear that this Court has not considered the legality and validity of the Will and that whether by Will if the lands in question are transferred then the petitioners would become the agriculturists or not. It is further made clear that the entries in favour of the petitioners in the revenue record with regard to the disputed land are made only for the fiscal purpose, i.e., for the purpose of payment of revenue only and will not confer any title in favour of the petitioners only on the basis of the aforesaid entries. It is also made clear that all the aforesaid revenue entries shall be subject to the ultimate outcome of the civil suit pending between the parties and on conclusion of the trial by the Civil Court, such mutations have to follow the decree that may be passed by the Civil Court. The Revenue authorities are also directed to make further Entry in the revenue records with regard to pendency of Regular Civil Suit No. 81 of 2003 pending in the Court of learned Civil Judge (SD), Surat and injunction, if any, granted by the Civil Court. Rule is made absolute accordingly with no order as to costs.

rmr. [M.R. Shah, J.]